IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 711 of 1998

with

SPECIAL CIVIL APPLICATION No 7775 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DARSHANKUMAR R THAKER

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 711 of 1998
MR MUKESH H RATHOD for Petitioner No. 1
RULE SERVED for Respondent No. 1

2. Special Civil Application No. 7775 of 1997
MR PRADIP D BHATE A.G.P. for Petitioner No.1
MR MUKESH H RATHOD for respondent No. 1
..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/01/2004

ORAL JUDGEMENT

Both these petitions arise from the same judgment and award which are passed by the Labour Court, Baroda in Reference (L.C.V.) No. 905 of 1996 (old No. 535 of 1989) dated 18th March, 1997 and, therefore, they are heard together and now they are being disposed of by this common judgment.

2. The facts of the case in nutshell can be stated as under :-

2.1. Petitioner in Special Civil Application No. 711 of 1998 and Respondent in Special Civil Application No. 7775 of 1997 (hereinafter referred to as "the workman") was appointed in the office of the petitioner in Special Civil Application No.7775 of 1997 (hereinafter referred to as "the employer") vide order dated 4th April, 1983. According to the workman, though he was appointed on the post of tracer, he was asked to work as clerk-cum-typist and he was paid salary accordingly. It is further stated that though he had brought to the notice of the employer to pay him the salary of tracer, he was informed that the post of tracer was till then not sanctioned and it was not possible for the employer to pay salary of tracer to the workman. It is the case of the workman that he repeatedly requested the employer to extend all the benefits available to the tracer and to make him permanent on that post. His request was turned down and he was on the contrary threatened that if any representation was made for making him permanent on the post of tracer or clerk-cum-typist, he would be sacked from the service. Since he did not succumbed to the threat, his service was terminated orally without following the requisite procedure. It is the case of the workman that the appointment was being given for a period for a month but on every 30th and 31st day, artificial break was given. He further requested the employer to take him back in the service, but the said request was not granted and hence, he raised dispute which was referred to the Labour Court under the provisions of Section 10 (1) (C) of the Industrial Disputes Act, 1947 vide order dated 7th June, 1989.

2.2. Before the Labour Court, the workman filed statement of claim wherein the aforesaid facts were reiterated and on the basis of the same, prayer for reinstatement with full backwages was made.

2.3. The employer contested the said proceedings by filing its reply at Exh.17. According to it, appointment of the workman was purely on temporary and ad hoc basis for a definite period and/or till such time any candidate from the Central Recruitment Scheme was available. Since the exigency was over on 30th November, 1985, the workman's service was terminated. It was further contended that the appointment was purely temporary and it was made in view of the heavy work load and, therefore, the workman could not be considered as a 'permanent workman' and the Reference under the Provisions of the Industrial Disputes Act was not maintainable. On these averments, it was prayed that the Reference be dismissed.

3. At the hearing, it was held by the Labour Court that the workman had rendered continuous service for more than 249 days and the breaks given in the service between 1983 and 1985 were artificial, he was therefore, entitled to be reinstated in service. The Labour Court after considering the various judgments cited before it by both the sides, came to the conclusion that the workman was entitled to have reinstatement in service. This finding was given while considering the submissions of the employer, that the petitioner was a Government department and not an 'Industry'. On the strength of these findings, the Labour Court granted the Reference partly and directed the employer to reinstate the workman on his original post. It also held that considering the fact that the workman was paid wages during the pendency of the proceedings, there was no need to grant relief regarding backwages. However, it directed the employer to pay Rs.1,000=00 towards the expenditure of the litigation.

4. The workman has filed Special Civil Application No. 711 of 1998 challenging the denial of backwages to him.

5. At the hearing, Mr.Pradip Bhate learned A.G.P. submitted that the judgment and award of the Labour Court are erroneous because the workman was appointed purely on temporary and ad hoc post and he could be relieved from the service without issuing any notice or following any procedure. He has further submitted that the petitioner is a department of the Government which is not an 'Industry' and the present Reference is, therefore, not maintainable.

5.1. As against that, Mr.Rathod learned advocate appearing for the workman has submitted that the judgment

and award directing the employer to reinstate the workman with continuity of service and payment of Rs.1,000=00 towards the expenditure of the litigation is just and proper. He has further submitted that considering the facts and circumstances of the case, the Labour Court ought to have awarded the backwages. Lastly, he has submitted that the petition of the Government had no merit and it deserved to be dismissed and his petition was required to be allowed.

6. Having gone through the record of both the petitions, and having considered the submission made by the learned advocates, it appears that though the workman was being appointed for a period not exceeding one month and breaks of two days were given between two appointments, it is clear that the breaks were artificial breaks and they were being given only with a view to avoid any liability that may arise under the provisions of Industrial Disputes Act. Practice of giving such artificial breaks is often deprecated not only by this Court but by other High Courts and Apex Court also. The law is very well settled on this aspect. The Labour Court is, therefore right, when it came to the conclusion that such artificial breaks cannot be taken into consideration to determine the issue with regard to the continuous service of concerned workman. In the present case, the workman had rendered service to the employer for a period between 4th April, 1983 and 31st August, 1985 i.e. almost for two years and three months. If that be so, and if it is found by the Labour Court that he had rendered service for a period for more than 240 days, it appears to be absolutely just and proper and it does not call for any interference by this Court. The second aspect has also been duly considered by the Labour Court with regard to maintainability of the Reference under the Industrial Disputes Act vis-a-vis the submissions regarding the employer being Government department was not an Industry. While doing so, the Labour Court had taken into consideration several decisions of the different Courts, details of which have been duly stated in paragraph 7 of the judgment. In view of the aforesaid, conclusion reached by the Labour Court that the order of dismissal passed against the workman was illegal and was required to be quashed and set aside, is absolutely just and proper.

6.1. It is also brought to my notice that by virtue of the order dated 9th March, 1998 passed by this Court (Coram : K.R. Vyas, J.) in Civil Application No. 2308 of 1998, the workman was reinstated in service in accordance with the direction given by the Labour Court

and he is being paid salary in accordance with the said order. The learned advocate appearing for the workman is directed to supply a copy of the said order and the same is ordered to be taken on the record. In view thereof, the Government's petition otherwise now has become infructuous.

7. The next question that arise for consideration is whether denial of backwages to the workman by the Labour Court is proper. The Labour Court while doing so has taken into consideration the fact that by virtue of this Courts order, the workman had received wages during the pendency of the proceedings, which was Rs.750 to 800 per month. Since he was being appointed as daily wager, the aforesaid amount takes care of the wages and no further benefit was required to be granted. The conclusion reached by the Labour Court on this aspect appears to be just and proper and I am not inclined to disturb this order.

Both these petitions have no merit and they deserve to be dismissed and they are hereby ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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